

United States Postal Service

§ 962.20

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) Failure to comply with an order. When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) Failure to prosecute or defend. If a party fails to prosecute or defend an action under this part commenced by service of a Complaint, the Presiding Officer may dismiss the action or enter an order of default.

(e) Failure to make timely filing. The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

§ 962.16 Disqualification of reviewing official or presiding official.

If a Respondent believes, in good faith, that the Reviewing Official or Presiding Officer should be disqualified because of personal bias, or other reason, the Respondent may file a timely and sufficient affidavit alleging such belief with supporting evidence. If the Presiding Officer finds that such allegations concerning the Reviewing Official are meritorious, he may direct the Reviewing Official to disqualify himself and request the appointment of a

new Reviewing Official. Where a Respondent seeks the disqualification of a Presiding Officer, such Presiding Officer, may, in his discretion, disqualify himself at any time during the proceeding. In the event a Reviewing Official or Presiding Officer withdraws from a hearing, the proceeding shall be stayed until the assignment of a new Reviewing Official or Presiding Officer.

§ 962.17 Ex parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

§ 962.18 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

§ 962.19 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 962.20 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written initial decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relied upon in determining whether the Respondent is liable under 31 U.S.C. 3802, and, if liability is found, shall set forth the amount of any penalties and assessments imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her initial decision, and a statement describing the right of any person determined to be liable under 31 U.S.C. 3802, to appeal, in accordance with